

DEC 1 1999

SUPERIOR COURT
BETH L. BOULIN
THURSTON COUNTY CLERK

SUPERIOR COURT OF WASHINGTON FOR THURSTON COUNTY

TACOMA WATER, a division of the Department of Public Utilities of the CITY OF TACOMA, a Washington municipal corporation; COVINGTON WATER DISTRICT, a Washington municipal corporation; LAKEHAVEN UTILITY DISTRICT, a Washington municipal corporation; SEATTLE PUBLIC UTILITIES, a department of THE CITY OF SEATTLE, a Washington municipal corporation; and E.E. (TED) COATES, an individual voter paying rates and taxes,

Plaintiffs,

v.

STATE OF WASHINGTON, in its general capacity as proponent for I-695 and in its capacity as a ratepaying water customer of the plaintiffs,

Defendant.

No. 99 2 02299 5

COMPLAINT FOR DECLARATORY RELIEF

Plaintiffs allege as follows:

SUMMARY OF THIS SUIT

1. The plaintiff municipalities have already invested more than 20 years of planning and more than \$40 million dollars in the development of a major regional water supply project (the "Water Supply Project"). The Water Supply Project is needed to provide clean water to the rapidly growing Pierce-King County region. Financing and construction of this project are scheduled to commence in the year 2000, with completion of environmental review and subsequent policy action.

COMPLAINT FOR DECLARATORY RELIEF - 1

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1 Plaintiffs seek a declaratory judgment that the provisions of Initiative 695 do not prevent this needed
2 Water Supply Project from going forward.

3 2. Initiative 695 ("I-695") provides, in part, that all future state and local "tax increases"
4 must be approved by voters. "Tax" is defined in the initiative to include "any monetary charge by
5 government."

6 3. Subjecting water rates and other utility charges adopted by the plaintiff municipalities to
7 voter approval requirements would preclude the sale of rate-backed municipal bonds necessary to
8 pay for construction of the Water Supply Project. Accordingly, the Water Supply Project would
9 have to be terminated.

10 4. The plaintiffs therefore seek a declaratory judgment regarding I-695's interpretation and
11 validity in order to allow the needed Water Supply Project to be built.

12 PARTIES

13 5. Tacoma Water. The City of Tacoma ("Tacoma") is a first class city under Title 35 RCW.
14 Tacoma Water, a division of the City of Tacoma Department of Public Utilities, is the lead
15 participant in the Water Supply Project. Tacoma sells water to, and collects water rates from, the
16 State of Washington ("State"). In addition to supplying water to direct service customers, Tacoma
17 also sells water to other cities and water districts that depend on Tacoma for their water supplies.
18 Tacoma has express statutory authority to set water rates, other utility charges, and special
19 assessments pursuant to RCW 35.67.020, RCW 35.92.010, and other statutes. Tacoma will be
20 directly and adversely affected if such water rates, other utility charges, or special assessments are
21 subject to the voter approval provisions of I-695.

22 6. Covington Water District. Covington Water District ("Covington") is a water-sewer
23 district under Title 57 RCW and is a participant in the Water Supply Project. Covington has express
24 statutory authority to set water rates, other utility charges, and special assessments pursuant to
25 RCW 57.08.081, RCW 57.16.050, and other statutes. Covington will be directly and adversely
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1 affected if such water rates, other utility charges, or special assessments are subject to the voter
2 approval provisions of I-695.

3 7. Lakehaven Utility District. Lakehaven Utility District ("Lakehaven") is a water-sewer
4 district under Title 57 RCW and is a participant in the Water Supply Project. Lakehaven has express
5 statutory authority to set water rates, other utility charges, and special assessments pursuant to
6 RCW 57.08.081, RCW 57.16.050, and other statutes. Lakehaven will be directly and adversely
7 affected if such water rates, other utility charges, or special assessments are subject to the voter
8 approval provisions of I-695.

9 8. Seattle Public Utilities. The City of Seattle ("Seattle") is a first class city under Title 35
10 RCW. Through its Seattle Public Utilities, Seattle is a participant in the Water Supply Project.
11 Seattle sells water to, and collects water rates from, the State. In addition to supplying water to direct
12 service customers, Seattle also sells water to other cities and water districts that depend on Seattle
13 for their water supply. Seattle has express statutory authority to set water rates, other utility charges,
14 and special assessments pursuant to RCW 35.67.020, RCW 35.92.010, and other statutes. Seattle
15 will be directly and adversely affected if such water rates, other utility charges, or special
16 assessments are subject to the voter approval provisions of I-695.

17 9. Plaintiff Municipalities. For simplicity, the above plaintiffs are referred to collectively in
18 this Complaint as the "plaintiff municipalities".

19 10. E.E. (Ted) Coates. E.E. (Ted) Coates is a resident of Tacoma and the former Director of
20 Utilities for Tacoma. He is a Washington taxpayer and ratepayer who uses water supplied by
21 Tacoma Water. Mr. Coates is a registered voter who voted in the November 2, 1999 general
22 election, and he will be directly and adversely affected if the plaintiff municipalities' water rates,
23 other utility charges, or special assessments are subject to the voter approval requirements of I-695.
24 He will be directly and adversely affected if the Water Supply Project does not go forward because
25 of I-695.
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11. State. The State of Washington is charged with carrying out the provisions of I-695 and is also a water utility customer of some of the plaintiff municipalities. Tacoma supplies water to the University of Washington and to other State facilities, including those located at 11211 41st Avenue, S.W. Tacoma, WA 98499. Seattle also provides water to the University of Washington, which is one of the largest water users in the State.

JURISDICTION & VENUE

12. Subject Matter Jurisdiction. This Court has subject matter jurisdiction over this action pursuant to RCW 7.24.010 and .030 because this action presents a justiciable controversy between the plaintiffs and the State regarding the plaintiffs' rights and obligations under I-695. This is an actual and existing dispute within the meaning of chapter 7.24 RCW between the parties with genuine and opposing interests which are direct and substantial, a judicial determination of which will be final and conclusive.

13. Jurisdiction Over State. This Court has jurisdiction over the State. Such jurisdiction arises under, inter alia, RCW 2.08.010, RCW 4.92.010, and chapter 7.24 RCW.

14. Venue. Venue for this action properly lies in this Court pursuant to RCW 4.92.010.

BACKGROUND

15. Overview of the Project. The plaintiff municipalities have been engaged in the development of the Water Supply Project for nearly two decades. They recently completed negotiations on a proposed project agreement (“Project Agreement”) that provides for the project’s implementation. The Water Supply Project will meet critical regional water supply needs well into the coming century and provide the region with the benefits of an interconnected water supply system.

16. Early Planning. Planning for the Water Supply Project began before 1980. To satisfy long term water needs in Tacoma's service area and in south King County, Tacoma's 1980 Water Supply Plan envisioned obtaining rights to use water from the Green River ("Second Diversion

1 Water Right"). Tacoma proposed to provide 15 million gallons per day (mgd) of that water to other
2 water purveyors in south King County. Since that time, Tacoma has procured the Second Diversion
3 Water Right. Tacoma has also obtained rights of way and regulatory permits and has taken other
4 actions to facilitate the use of the Second Diversion Water Right.

5 17. Evolution of Project Scope. The Water Supply Project evolved to include additional
6 water storage at the Howard Hanson Dam. In 1992 Tacoma and Seattle initiated discussions that
7 resulted in Seattle's becoming a project participant and the inclusion of a branch pipeline to connect
8 the Water Supply Project Pipeline to the Seattle water system. In July 1997, Seattle and Tacoma
9 executed a letter agreement, and in February 1998, other project participants executed a separate
10 letter agreement with Tacoma, both of which agreements set forth the principles that the parties used
11 to develop the Project Agreement.

12 18. Project Components and Capacity. The Water Supply Project has three primary
13 components:

- 14 (1) increasing the water storage capacity of Howard Hanson Dam,
- 15 (2) building a second supply pipeline ("Water Supply Pipeline") from Tacoma's
16 Green River Headworks near Palmer to downtown Tacoma, and
- 17 (3) building a branch pipeline to connect the Water Supply Pipeline to the Seattle
18 water system.

19 The 33-mile Water Supply Pipeline from the Howard Hanson Dam on the Green River near Palmer,
20 Washington to downtown Tacoma will provide as much as 73 million gallons of water every day and
21 will provide a backup water supply for Tacoma's service area. Studies show that without the Water
22 Supply Project there will be severe water shortages for some of the plaintiff municipalities and other
23 area jurisdictions that purchase water from plaintiff municipalities. The Water Supply Project's
24 improvements to the Howard Hanson Dam will add 22,400 acre-feet of additional summer water
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1 storage capacity to that dam, which will allow the Second Diversion Water Right of as much as 65
2 million gallons per day to be available to the plaintiff municipalities during peak summer periods.

3 19. System Integration. The Water Supply Project pipelines interconnect the project
4 participants' water systems. At different times of the year, some of the plaintiff municipalities have
5 a water surplus at the same time others may have a water shortage. The connecting pipelines will
6 allow the plaintiff municipalities to share water to meet the needs of their respective retail and
7 wholesale customers. This system integration will give the plaintiff municipalities added flexibility
8 in providing clean water to their communities during peak water usage periods. The Water Supply
9 Project will provide opportunities to develop regional conservation and will provide the region with
10 a more reliable water supply system.

11 20. Environmental Review. A programmatic Environmental Impact Statement for the Water
12 Supply Project (which is also known as the Second Green River Diversion & Transmission Project)
13 was prepared in 1980, and a project specific Environmental Impact Statement was prepared in 1987
14 and updated in 1994, all in accordance with the Washington State Environmental Policy Act, chapter
15 43.21C RCW. Seattle is undertaking its own programmatic Environmental Impact Statement
16 assessing the environmental effects of its participation in the Water Supply Project. Tacoma is
17 undertaking a project specific Environmental Impact Statement for the branch pipeline to connect
18 the Water Supply Pipeline to the Seattle water system.

19 21. Consistency with State and Local Planning. The Water Supply Project is consistent with
20 state and local planning requirements, including the plans and programs of the plaintiff
21 municipalities. Gravity fed surface water sources, such as using the Second Diversion Water Right,
22 provide a desirable and complimentary source of water supply to augment groundwater sources and
23 will maximize the benefits to residents of the region.

24 22. Environmental and Tribal Benefits. Development of the Water Supply Project will
25 provide increased flows in the Green River during critical periods to benefit the migration and
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1 spawning of fish, as specified in a 1995 agreement entered into between Tacoma and the
2 Muckleshoot Indian Tribe ("Tribe"). This agreement also provides other benefits to the Tribe,
3 including fisheries restoration and access to watershed areas for cultural and spiritual activities. The
4 environmental benefits associated with the Water Supply Project will maintain and improve the
5 health of the Green River salmon runs by providing fish access to the upper Green River Watershed
6 for the first time since 1912. The Water Supply Project will also provide fish screening and fish
7 handling facilities at Tacoma's diversion dam and numerous environmental enhancement activities
8 along the Green River. This provides a major contribution to recovery of salmon listed as threatened
9 under the Endangered Species Act. These environmental and tribal benefits will not be realized if
10 the Water Supply Project cannot proceed.

11 23. Meeting Water Supply Needs. The increasing urbanization of south King County,
12 growth in the entire region, compliance with Growth Management Act objectives, and listings of
13 salmon stocks pursuant to the Endangered Species Act have made it essential to use water supplies
14 effectively and efficiently. The Water Supply Project makes this possible. The lack of adequate
15 water has become critical to certain south King County water purveyors, which have been forced to
16 impose new hook-up moratoria, making the expeditious completion of the Water Supply Project
17 imperative.

18 24. Additional Beneficiaries. The Water Supply Project will also provide water to
19 communities in King and Pierce Counties other than those within the plaintiff municipalities'
20 geographic boundaries. Municipalities (other than the plaintiff municipalities) are depending on the
21 Water Supply Project to supply them with clean water.

22 25. Economic Considerations. The Water Supply Project offers all the participants a source
23 of water with the benefits of joint development, tax exempt financing, and economies of scale.

24 26. Importance of Timely Implementation. The plaintiff municipalities have recognized and
25 are committed to meeting their joint responsibilities to fulfilling the needs of both fish and people for
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1 water. Each of the plaintiffs believes that, subject to the completion of environmental review, the
2 timely completion and operation of the Water Supply Project are critical to meeting such joint
3 responsibilities.

4 Project Construction & Development

5 27. Permits Already Issued. Tacoma has obtained the construction permits for the Water
6 Supply Project, including a U.S. Army Corps of Engineers permit which will expire if the Water
7 Supply Project encounters significant delays. In addition, King County has issued its shorelines
8 permit for the Water Supply Pipeline.

9 28. Development & Operation Contracts. The plaintiff municipalities have entered into letter
10 agreements providing for the development and operation of the Water Supply Project. The plaintiff
11 municipalities have negotiated the Project Agreement and, pending environmental review, expect to
12 execute the Project Agreement to replace the letter agreements in the first quarter of 2000.

13 Financing

14 29. Financing Requirements. The plaintiff municipalities impose various types of charges to
15 pay for their water utility operations and capital improvements. They include (a) charges for goods,
16 services, or benefits provided in exchange for monetary or other consideration, (b) local
17 improvement assessments, (c) connection or capacity charges, and (d) inter-governmental and intra-
18 governmental payments or charges. Because the plaintiff municipalities do not have the cash
19 necessary to build the Water Supply Project, they must borrow that money by selling municipal
20 bonds. Bonds to finance the Water Supply Project cannot be sold unless they are backed by the
21 plaintiff municipalities' promises to increase charges as necessary to repay the bondowners. Certain
22 of those bonds must be backed by promises to deposit payments of local improvement assessments
23 into the relevant bond funds.

1 Initiative 695

2 30. November 1999 Vote. A majority of the voters in the November 2, 1999 general election
3 voted in favor of I-695. No measures with provisions similar to those in I-695 were included on the
4 November 2, 1999 ballot.

5 31. License Tab Initiative. During the campaign, I-695 was commonly referred to as the
6 "\$30 License Tab Initiative."

7 32. I-695 Provisions. I-695 contains three discrete substantive sections.

8 33. Ballot Title. The ballot title describing I-695 was: "Shall voter approval be required for
9 any tax increases, license tab fees be \$30 per year for motor vehicles, and existing vehicle taxes be
10 repealed?"

11 34. Effective Date. By its terms, I-695 takes effect on January 1, 2000.

12 35. Voter Approval Requirement. I-695 purports to require "voter approval" of all "tax
13 increases," and the text of the initiative purports to define "tax" to include "any monetary charge by
14 government."

15 36. Impact of Voter Approval Requirement. Application of a voter approval requirement to
16 increases in the plaintiff municipalities' charges, including water rates, other utility charges, or
17 special assessments would preclude the sale of the municipal bonds necessary to finance the Water
18 Supply Project. If the municipal bonds necessary to finance the Water Supply Project cannot be
19 sold, then the Water Supply Project cannot be built.

20 DECLARATORY JUDGMENT CLAIMS

21 37. Interpretation of I-695 With Respect to Utility Related Charges. Washington law entitles
22 plaintiffs to a declaratory judgment that the voter approval requirements of I-695 do not apply to
23 water rates or other utility charges, including but not limited to (a) charges for goods, services, or
24 benefits provided in exchange for monetary or other consideration, (b) local improvement
25 assessments, (c) connection or capacity charges, and (d) inter-governmental and intra-governmental
26 payments and charges.

38. Constitutionality of I-695. Plaintiffs request a declaration that I-695 violates the Washington State Constitution when applied to municipal water rates, other utility charges, or assessments. In this regard, Washington law entitles the plaintiffs to a declaratory judgment that I-695 violates the Washington State Constitution, including but not limited to the following provisions: (a) Article II, §§ 1, 21, and 22 (referendum procedures and procedures for enactment of laws); (b) Article II, § 19 (requirement that a bill contain a single subject expressed in the title); (c) Article II, § 37 (prohibition against repeal and amendment by implication); (d) Article VII, § 1 (prohibition against surrender, suspension or contracting away of taxing power); (e) Article VIII, § 7 (prohibition against unlawful gifts of public funds to the extent I-695 purports to limit charges to less than fair market value); (f) Article XI, § 12 (local taxing authority); and (g) Article XXIII (procedures for amending constitution).

RELIEF REQUESTED


Plaintiffs request the following relief from this Court:

1. The declaratory judgments previously pleaded in this Complaint.
2. Permission to amend the pleadings to add additional claims or parties to conform to the proof offered at the time of hearing or trial; and

3. Such other and further relief as is consistent with the declaratory judgments issued or as appears to the Court to be just and equitable.

RESPECTFULLY SUBMITTED this 16th day of December, 1999.

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